

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company (U 39 E) for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Jefferson-Martin 230 kV Transmission Project.

Application 02-09-043
(Filed September 30, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING CARE AND WEM NOTICES OF INTENT
TO CLAIM COMPENSATION**

I. Summary

On December 5, 2003, CALifornians for Renewable Energy, Inc. (CARE) filed a motion to intervene out of time with an attached Notice of Intent (NOI) to seek intervenor compensation for participation in Application (A.) 02-09-043. No opposition to CARE's NOI has been filed. On December 15, 2003, Women's Energy Matters (WEM) filed an amended petition to intervene and an amended motion for acceptance of the late-filed NOI attached to the amended motion. On December 29, 2003, Pacific Gas and Electric Company (PG&E) filed an opposition to WEM's filings.

The requests of CARE and WEM to intervene were granted on January 12, 2004, during the evidentiary hearing in this proceeding. In this ruling, I address

these parties' NOI requests, as required by Pub. Util. Code § 1804(b)¹ and in consultation with the Assigned Commissioner.

After reviewing CARE's NOI, I am unable to determine, based on the information provided in the filing, whether CARE meets the definition of a customer or whether it has met the significant financial hardship test. Therefore, I cannot at this time conclude whether CARE is eligible to claim compensation in this proceeding. CARE may amend its NOI to make the required showing no later than March 25, 2004.

I find that WEM will be eligible to claim compensation in A.02-09-043, subject to a showing of significant financial hardship.

II. NOI Requirements

A. Timely Filing

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." Since the prehearing conference in A.02-09-043 occurred on January 10, 2003, CARE's and WEM's NOIs were not timely filed.

Rule 76.74(b) provides that the administrative law judge may specify an appropriate procedure for accepting new or revised NOIs in cases where parties cannot reasonably identify issues within the time set by statute or where new issues emerge after the time set for filing. CARE submits that its inadvertent failure to intervene earlier was due to an administrative oversight. WEM states

¹ All statutory references are to the Public Utilities Code.

that its failure to file a timely NOI was the result of its discovery of significant new information in the middle of the proceeding.

In light of CARE's and WEM's relative inexperience in participating in Commission proceedings, I am willing to accept their NOIs. This finding is consistent with § 1801.3(b), which states the Legislature's intent that the intervenor compensation statutes be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.

B. Customer Status

Section 1802(b) defines the term "customer" as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires that a participant specifically identify in its NOI how it meets the definition of customer.

A Category 1 customer is an actual customer who represents more than his own narrow self-interest, and is a self-appointed representative of at least some other consumers, customers, or subscribers of the utility. A Category 2 customer is a representative who has been authorized by actual

customers to represent them. Category 2 connotes an arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers' views in a proceeding. The Commission has noted that the statute permits a series of authorizations. For example, a customer or group of customers may form or authorize a group to represent them, and the group in turn may authorize a representative such as an attorney to represent the group. A Category 3 customer is a formally organized group authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires, if a participant is a group or organization, that it provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or organization should indicate the percentage of its membership comprised of residential ratepayers. (*See* D.98-04-059, *mimeo.*, at pp. 83 and 88.)

1. CARE

CARE reports that it is a nonprofit 501(c)(3) corporation comprised of members who are residential ratepayers or renewable energy suppliers of PG&E who live in the area of PG&E's proposed Jefferson-Martin 230 kV transmission project.

CARE does not explain how it meets the definition of customer or what category of customer it purports to be. Nor has it provided a copy of its articles or bylaws. Without such information, I cannot determine whether CARE meets the definition of a customer. If CARE continues to seek a finding of eligibility, it must amend its NOI no later than March 25, 2004 to specify and justify the customer category under which it seeks eligibility. If CARE seeks Category 3 status, it must provide a copy of its articles or bylaws, noting where

in the document the authorization to represent residential ratepayers can be found.

2. WEM

WEM states that it is a California nonprofit 501(c)(3) corporation intervening as a customer on behalf of Mrs. Dorothy J. Edwards and Mr. Jesse Mason, PG&E ratepayers. WEM states that, as low-income ratepayers, Mrs. Edwards and Mr. Mason are concerned about energy costs and about the “highly polluting” energy facilities in southeast San Francisco. WEM states that it has participated in many venues related to the issues in this proceeding and can offer an integrated perspective on the Jefferson-Martin project.

Based on these assertions, I find that WEM, as a representative of Mrs. Edwards and Mr. Mason, meets the definition of a customer eligible to claim compensation under our intervenor compensation program.

C. Significant Financial Hardship

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in its NOI. Alternatively, the customer may make the required showing in its request for an award of compensation. CARE and WEM each included a showing regarding significant financial hardship in its NOI.

Section 1802(g) defines “significant financial hardship” as:

“either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization

is small in comparison to the costs of effective participation in the proceeding.”

Category 1 customers seeking a finding of significant financial hardship must disclose their finances to the Commission, under appropriate protective order. As described in D.98-04-059, persons seeking compensation from the Commission should provide detailed documentation of their finances similar to that required by the State’s civil courts where court filing fees are waived for individuals who attest to their inability to pay the fees. D.98-04-059 provided that Category 1 customers must disclose their gross and net monthly income, monthly expenses, cash, and assets, including equity in real estate. Subsequent rulings have determined that it is reasonable to exclude the equity of a participant’s personal residence from this disclosure. The Commission recognizes the importance of protecting the confidentiality of financial information and, in D.98-04-059, initiated a procedure and model filing for individual intervenors to obtain a protective order.

A Category 2 customer should provide the same financial information described above for the customer(s) who authorized the representative to serve in a representative capacity.

A Category 3 group or organization would need to demonstrate that effective participation may cost well in excess of typical residential electric bills for its individual members. In order to make that finding, I would need to know the estimated cost of participation, the average bills of the members of the organization, and the financial situation of the organization.

1. CARE

CARE estimates that it will cost \$317,500 to participate in this proceeding. CARE submits that neither CARE as a group nor the individual

ratepayers who make up CARE have the financial resources to pay the costs of effective participation in this proceeding. CARE explains that it is in the process of raising funds from its members that can be used to participate in this proceeding, but that this amount will be significantly less than the estimated cost of participation. CARE states that, while it is difficult to quantify the economic interest that one of its members would have in stopping/modifying the construction of a 230 kV line through his/her neighborhood, it is clear that the cost of effective participation in this proceeding outweighs the economic interest of any individual member. Thus, CARE concludes, effective participation will create a significant and undue hardship for CARE.

Because CARE has not provided sufficient information to determine how it meets the definition of customer, I do not know which standard of significant financial hardship to apply. Further, CARE's showing is inadequate to support a showing of significant financial hardship for any of the three categories of customer. When CARE amends its NOI filing to provide information regarding its proper classification as a customer, CARE may also provide information regarding financial hardship consistent with the category of customer it proposes. Alternatively, CARE may wait until its request for award of compensation to make its showing regarding significant financial hardship.

2. WEM

WEM estimates that its participation in this proceeding will cost \$47,200. WEM submits that, without compensation, Mrs. Edwards and Mr. Mason, who are low-income ratepayers, would not have the means to participate in this proceeding.

WEM does not provide any financial information for Mrs. Edwards or Mr. Mason. Without documentation to establish the significant financial

hardship of Mrs. Edwards or Mr. Mason, it is not possible at this time to reach a conclusion as to whether the “significant financial hardship” standard has been met. Section 1804(a)(2)(B) allows this showing to be included with the actual request for compensation and WEM should make this showing in its request for compensation.

D. Nature and Extent of Planned Participation

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer’s planned participation in the proceeding to the extent this can be predicted.

CARE states that it intends to participate fully in all aspects of the environmental review and certificate of public convenience and necessity phases of this proceeding, with participation to include conducting discovery, preparing testimony, defending its testimony in hearings, cross-examining witnesses, and filing briefs, comments, and other pleadings as necessary. CARE plans to focus its efforts on determining the need for the proposed project, defending the community values affected by the project, and identifying alternatives that achieve the proposed project’s goals while minimizing adverse impacts of the project. In addition, CARE wishes to actively participate in the environmental review process.

WEM states that it plans to address the capability of the existing system, projections of future load, transmission alternatives to Jefferson-Martin, electric and magnetic field issues, integrated resource planning, conservation, renewable energy, and environmental justice solutions in southeast San Francisco.

CARE’s and WEM’s showings meet the requirements of § 1804(a)(2)(A)(i). In response to PG&E’s assertion that some of the issues WEM

proposes to raise are outside the scope of the proceeding, I note that expenditures on issues outside the scope of this proceeding would not be eligible for compensation.

E. Itemized Estimates of Compensation

Section 1804(a)(2)(A)(ii) requires that each NOI include an itemized estimate of the compensation the customer expects to request.

CARE estimates that it will request compensation in the amount of approximately \$317,500 as indicated in the following table:

Amount	Description
\$150,000	Attorney fees (500 hours at \$300/hour)
\$ 35,000	Regulatory/economic expert (175 hours at \$200/hour)
\$ 40,000	Biologist PhD (200 hours at \$200/hour)
\$ 40,000	Air quality expert PE (200 hours at \$200/hour)
\$ 37,500	CARE member's time (300 hours at \$150 hour)
\$ 45,000	President's technical assistance (300 hours at \$150/hour)
\$ 10,000	Travel, postage, photocopies, telephone
\$317,500	Total

CARE states that it will provide time records, expense records, and justification for hourly rates in its request for an award of compensation.

WEM estimates that it will request compensation in the amount of \$47,200, as follows:

Amount	Description
\$27,000	WEM's Executive Director (180 hours at \$150/hour)
\$10,000	Attorney fees (40 hours at \$250/hour)
\$ 3,000	Expert consultant (20 hours at \$150/hour)
\$ 6,000	Paralegal (80 hours at \$75/hour)
\$ 1,200	Postage. Photocopies, travel, etc.
\$47,200	Total

CARE and WEM satisfactorily present itemized estimates of the compensation they expect to request. These itemizations fulfill the requirements of § 1804(a)(2)(A)(ii).

III. Conclusions

As I have explained, CARE may amend its NOI to provide information needed to determine its status as a customer and to assess significant financial hardship. Absent this information, I cannot determine whether it should be eligible for an award of compensation.

WEM has met the statutory requirements and is eligible to claim intervenor compensation in this proceeding, subject to a showing of significant financial hardship. This ruling in no way ensures compensation. As must any intervenor, WEM must fully support its request for compensation, including substantiating that it has made a substantial contribution and the reasonableness of the hours spent and hourly rates. Compensation will not be paid for participation on issues that are irrelevant, outside the scope of the proceeding, or beyond the Commission's jurisdiction to resolve.

CARE and WEM are cautioned that they should carefully document the number of hours and hourly fees for counsel and technical experts and carefully allocate such expenses to specific issues pursued in this or other cases. They should also review Commission orders and, in preparing their compensation requests, take into account the Commission's practices for reducing rates and hours claimed, e.g., for travel time and time spent on the compensation request itself.

Therefore, **IT IS RULED** that:

1. The Notice of Intent (NOI) of Californians for Renewable Energy, Inc. (CARE) is accepted even though it was not timely filed.
2. The amended NOI of Women's Energy Matters (WEM) is accepted even though it was not timely filed.

3. CARE may amend its NOI no later than March 25, 2004 to provide additional information needed to assess whether it is a customer as that term is defined in Pub. Util. Code § 1802(b).

4. WEM meets the definition of a customer eligible to claim intervenor compensation in this proceeding by virtue of being a representative authorized by customers Dorothy J. Edwards and Jesse Mason.

5. CARE has not provided the documentation necessary to establish a showing of significant financial hardship. This showing must be made either as part of its amended NOI addressing whether it is a customer or in its request for compensation.

6. WEM has not provided the documentation necessary to establish a showing of significant financial hardship. This showing must be made in its request for compensation.

7. CARE has fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.

8. WEM has fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.

9. WEM has met the requirements of § 1804(a) for eligibility to claim compensation, subject to a showing of significant financial hardship.

10. A finding of eligibility for an award of compensation in no way ensures compensation.

11. WEM will be eligible to claim compensation as an intervenor, under §§ 1801 et seq., subject to a showing of significant financial hardship.

Dated March 11, 2004, at San Francisco, California.

/s/ CHARLOTTE F. TERKEURST

Charlotte F. TerKeurst
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding CARE and WEM Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated March 11, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.